IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.2123 OF 2004

Hindustan Aeronautics Limited ..Petitioner
Vs.
State of Maharashtra & Ors. ..Respondents

Mr.C.R.Sonowane, A.G.P. for Respondent nos.1 & 3.
Mr.P.U.Rane with Mr. R.V. More for Respondent no.4.
Mr. C.G.Gawankar with Ms. Deepa Sawant for Respondent no.2.

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 31ST JANUARY, 2005.

P.C.
. Rule. Heard forth with.

2. By order of 3rd February, 2003 passed in Writ Petition No.4686 of 1995 along with W.P. No.4863 of 1996 the matter was remanded to the State Government in terms as set out therein for resolving the dispute. The State Government by its order dated 22nd October, 2003 has passed an order resolving the dispute. It is this order which is a subject matter of the present challenge.

3. Various contentions have been raised. Suffice it to say that when tax is sought to be paid considering Section 125 of the Bombay Village Panchayat Act. 1958, that will have to be read with Rule 7 of the Maharashtra Village Panchayats (payment of lumpsum contribution by factories in lieu of taxes) Rules, 1961. Proviso to Rule 7 sets

out that in case of factories which are principally engaged for the production of Aircraft for defence purposes, the rate has to be fixed bearing in mind the amenities provided by such factories in the factory area as compared with the amenities provided by the Panchayat in the other areas within its jurisdiction and the amounts spent by the factories for such amenities. A perusal of the impugned order would show that the Panchayat agreed to abide with the decisions of the Minister whereas he petitioner, company proposed that the tax should be assessed at the rate of 5%.

4. According to the Panchayat the normal rate of tax would be Rs.1 Crore per annum. The learned Minister seems to have taken into consideration that the company was earning profits and it was essential to pay taxes to the Gram Panchayat. That really would not be an essential factor though in a case like a manufacturing unit it perhaps could be considered bearing in mind the general public interest. However, what has to be considered are the provisions of Rule 7. Petitioners point out that they had placed materials to show the amenities that they had provided. There is nothing to show whether the said contention was considered or not. Further there is nothing to show any comparision with the facilities provided by the Panchayat in their area of jurisdiction. In the light of that

the following order :-

. The impugned order dated 22nd October, 2003 is set aside. The matter is remanded back to the State Government for deciding afresh in terms of the order of this Court dated 3rd February, 2003, but bearing in mind the proviso to Rule 7.

. Considering the facts that the Panchayat has to run its affairs it would be in the fitness of things that the petitioners herein directly go on paying to the Panchayat at the rate of Rs.10 lacs per annum from 2002-2003 onwards pending the hearing and final disposal by the State Government. That payment would be subject to adjustment based on the order the State Government may finally pass.

. The petitioners to make the payment at any rate within four weeks from today. In the mean time respondent Panchayat not to take any steps to attach any assets of the petitioner.

. Rule made absolute accordingly. No order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)